

JAN 06 2006**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS****NOT FOR PUBLICATION****UNITED STATES COURT OF APPEALS****FOR THE NINTH CIRCUIT**

MARIA ELBA ROSAS-ROBLES,**Plaintiff - Appellant,****v.****ALBERTO R. GONZALES, Attorney
General; et al.,****Defendants - Appellees.**

No. 04-17070**D.C. No. CV-03-05143-SI****MEMORANDUM***

**Appeal from the United States District Court
for the Northern District of California
Susan Yvonne Illston, District Judge, Presiding**

**Argued and Submitted December 9, 2005
San Francisco, California**

Before: B. FLETCHER, HAWKINS, and BEA, Circuit Judges.

**Petitioner Maria Elba Rosas-Robles appeals the district court's order
denying her petition for writ of habeas corpus under 28 U.S.C. § 2241. Rosas-
Robles contends that she should be eligible for a deportation waiver under the**

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cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-
3.**

former version of § 212(c) of the Immigration and Nationality Act, 8 U.S.C. § 1182(c).

Because Rosas-Robles's habeas petition was pending before this court when the REAL ID Act of 2005 eliminated our habeas jurisdiction, 8 U.S.C.

§ 1252(a)(5), we treat her petition as a timely filed petition for review. *Alvares-Barajas v. Gonzales*, 418 F.3d 1050, 1052-53 (9th Cir. 2005). We affirm.

Because the parties are familiar with the facts, we recount them here only as necessary to explain our disposition.

Rosas-Robles was a lawful permanent resident of the United States when she pleaded guilty on December 1, 1999, to one count of conspiracy to distribute cocaine in violation of 21 U.S.C. § 846. The indictment detailed overt acts of the co-conspirators that took place between January 25, 1996, and May 18, 1996. The last time Rosas-Robles's acts were mentioned in the indictment was in connection with events that took place on April 17, 1996. Section 440(d) of the Anti-Terrorism and Effective Death Penalty Act of 1996 (AEDPA), Pub. L. No. 104-132, 110 Stat. 1214, took effect on April 24, 1996, and eliminated the Attorney General's discretion to grant deportation § 212(c) waivers to permanent residents convicted of aggravated offenses, such as Rosas-Robles.

An immigration judge pretermitted Rosas-Robles's application for § 212(c) relief and ordered her deported to Mexico. The Board of Immigration Affairs (BIA) summarily affirmed.

Citing *INS v. St. Cyr*, 533 U.S. 289 (2001), Rosas-Robles argues that § 440(d) of AEDPA cannot retroactively bar her eligibility for § 212(c) relief because she committed the underlying acts that led to her conviction before AEDPA's effective date. However, Rosas-Robles pleaded guilty to an indictment for conspiracy—a continuing offense—that lasted several weeks after AEDPA took effect. Her guilty plea to the indictment admitted all facts and charges thereof. *United States v. Kubrik*, 205 F.3d 1117, 1129-30 (9th Cir. 1999). As applied here, *Kubrik* means that in pleading guilty to the indictment, Rosas-Robles admitted she was part of a conspiracy which committed illegal acts through May 18, 1996. The relevant date when applying retroactivity analysis to a conspiracy charge is the date the conspiracy ended. *Cf. id.* at 1128-29. Therefore, we need not address Rosas-Robles's retroactivity argument because she admitted to committing an offense that continued after AEDPA took effect.

The fact that Rosas-Robles may not personally have committed any of the conspiracy's overt acts after AEDPA's effective date has no legal significance.² Defendants convicted for conspiracy are "in for a penny, in for a pound," meaning that they are culpable for all the acts of co-conspirators. *See Pinkerton v. United States*, 328 U.S. 640, 646-47 (1946). Hence, Rosas-Robles is culpable for her co-conspirators' acts that occurred after the effective date of AEDPA.

The BIA's decision is AFFIRMED.

² That neither party discussed until oral argument the ground we use to affirm the BIA also has no effect on our disposition because "[w]e may affirm on any ground fairly supported by the record." *Lee v. United States*, 809 F.2d 1406, 1408 (9th Cir. 1987).